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AZ CORP COMMISSION
DOCUMENT CONTROLAttorneys for Respondent, Clay
Eugene Lambert

BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of

CLAY EUGENE LAMBERT
3711 East Minton Place
Mesa, Arizona 85215
CRD No. 1959853,

Respondent.

DOCKET NO. S-03413A-01-0000

**RESPONDENT'S NOTICE OF FILING
PETITION TO ENFORCE AUTOMATIC
STAY OR ALTERNATIVELY,
APPLICATION FOR AN EXPEDITED
ORDER TO SHOW CAUSE IN UNITED
STATES BANKRUPTCY COURT**

Respondent, CLAY EUGENE LAMBERT, by and through counsel undersigned, hereby gives notice that on June 3, 2002, Proposed Special Counsel for Respondent, Lawrence Moon, filed Debtor's Petition to Enforce Automatic Stay or Alternatively, Debtor's Application for an Expedited Order to Show Cause (hereinafter, "Respondent's Petition"), in the matter, In re Clay Eugene Lambert and Renee Joanne Lambert, Chapter 11 case number 01-14885-RTB, before the United States Bankruptcy Court for the District of Arizona.

A copy of Respondent's Petition is attached hereto as Exhibit "A."

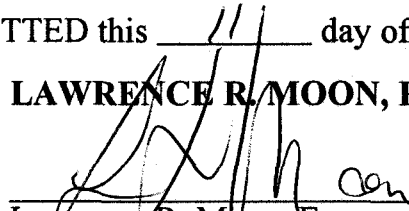
RESPECTFULLY SUBMITTED this 11 day of June 2002.

LAWRENCE R. MOON, P.C.

Arizona Corporation Commission

DOCKETED

JUN 11 2002


Lawrence R. Moon, Esq.
LAWRENCE R. MOON, P.C.
Post Office Box 766
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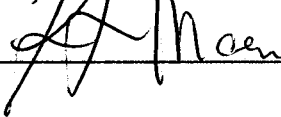
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GUST ROSENFELD P.L.C.
201 North Central Avenue, Suite 3300
Phoenix, Arizona 85073
Michael Salcido, Esq.
Attorneys for Respondent, Clay Lambert

ORIGINAL of the foregoing
and ten (10) copies
delivered to the Commission
this 11 day of June 2002 at:

Docket Control
Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

By: 

138_OSC.NOT

EXHIBIT A

1 Lawrence R. Moon - No. 017000
lawrence.moon@azbar.org
2 **LAWRENCE R. MOON, P.C.**
Post Office Box 766
3 Phoenix, Arizona 85001
Tel: (602) 252-5955
4 Fax: (602) 258-4132
Proposed Special Counsel for Debtors
5 and Debtors-in-Possession

6 **IN THE UNITED STATES BANKRUPTCY COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 In re

9
10 CLAY EUGENE LAMBERT and RENEE
JOANNE LAMBERT,

11
12 Debtors.

(Chapter 11 Case)

Case No. 01-14885-RTB

**DEBTOR'S PETITION TO ENFORCE
AUTOMATIC STAY OR
ALTERNATIVELY, DEBTOR'S
APPLICATION FOR AN EXPEDITED
ORDER TO SHOW CAUSE**

13 DEBTORS, by and through their proposed special counsel undersigned¹,
14 herein make this Application for an Order to Show Cause to be issued to Mark
15 Sendrow, Director of the Securities Division of the Arizona Corporation Commission;
16 Anthony Bingham, Special Assistant Attorney General; and Philip J. Dion III,
17 Administrative Law Judge of the Arizona Corporation Commission (collectively, the
18 "Respondents"), to show cause why this Court should not issue an order finding
19 them to be in violation of the provisions of 11 U.S.C. §362 and/or why this Court
20 should not issue an order pursuant to 11 U.S.C. §105 enjoining them from taking any
21 further action against Debtor Clay Lambert. In support of this Application, Special
22 Counsel represents as follows:

23 1. On September 26, 2001—prior to the commencement of this bankruptcy
24 proceeding—Mark Sendrow, Director of the Securities Division (the "Division") of the
25 Arizona Corporation Commission (the "Commission") filed with the Commission a
26

27 ¹ On May 22, 2002, Debtors filed an application to employ undersigned counsel, Lawrence R. Moon, as
28 special counsel to represent and defend Debtor Clay Lambert in proceedings pending before the Securities Division
of the Arizona Corporation Commission, Docket No. S-03413A-01-0000.

1 Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist,
2 for Restitution, for Administrative Penalties, and for Other Affirmative Action (the
3 "Proposed Order") against Clay Lambert, in which the Division alleged that Mr.
4 Lambert had engaged in activities which constituted violations of the Arizona
5 Securities Act, A.R.S. §44-1801, *et seq.* A copy of the Proposed Order is attached
6 hereto as Exhibit A.

7 2. The Proposed Order alleges that Debtor Clay Lambert engaged in
8 various activities that constituted violations of the Arizona Securities Act and
9 includes numerous proposed findings of fact and conclusions of law, including that
10 Mr. Lambert "engaged in dishonest or unethical practices."

11 3. On October 3, 2001, Mr. Lambert, through attorney Michael Salcido,
12 filed a request with the Division for a hearing and a pre-hearing conference.

13 4. On November 6, 2001, Clay Lambert and his wife, Renee Lambert (the
14 "Debtors") filed their voluntary petition under chapter 13. The Debtors' chapter 13
15 petition was subsequently converted to a chapter 11 proceeding on February 13,
16 2002. [Docket 17]

17 5. During the course of the Division's pre-hearing proceedings, Debtor's
18 attorney, Michael Salcido, sought a stay of the Division's proceedings pursuant to
19 the automatic stay of 11 U.S.C. §362(A)(1). After considering the parties' briefs on
20 the matter, Administrative Law Judge Dion Philip J. Dion III ("ALJ Dion"), issued a
21 Procedural Order ruling that the automatic stay under 11 U.S.C. §362(A) was not
22 applicable to the Division's proceeding against Mr. Lambert. The Division's
23 proceeding against Mr. Lambert was subsequently set for a hearing on April 10,
24 2002.

25 6. On April 10, 2002, the parties appeared for the hearing scheduled in the
26 Division's matter. Attorney Salcido sought approval of his previously filed
27 application to withdraw as counsel and a continuance of the hearing to allow
28 proposed attorney Lawrence Moon time to prepare for the hearing. The Division,

1 through Respondent Bingham, opposed attorney Salcido's requests and requested
2 that the hearing proceed as scheduled.

3 7. ALJ Dion continued the hearing to June 3, 2002 at 10:00 a.m. but
4 denied attorney Salcido's request to withdraw. ALJ Dion also requested that Mr.
5 Lambert inform the Bankruptcy Court of the Division's proceedings and request that
6 the Bankruptcy Court provide a statement of the Court's position regarding the
7 Respondent's ability to proceed against Mr. Lambert, including their ability to order
8 restitution, fines and/or suspension or termination of Mr. Lambert's securities
9 license.

10 8. On May 24, 2002, Debtor Clay Lambert, through attorney Salcido,
11 sought a stay of the Division's proceeding based upon information that Mr. Lambert
12 had become the subject of a criminal investigation by the Arizona Department of
13 Insurance ("ADOI") and/or the Arizona Attorney General ("AG"). A copy of Mr.
14 Lambert's Motion to Stay Administrative Proceeding is attached hereto as Exhibit B.

15 9. Following oral argument on the matter, on May 30, 2002 ALJ Dion
16 continued the Divisions' hearing for an additional three months.

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 I. INTRODUCTION

19 11 U.S.C. §362(a) provides an automatic stay of most proceedings against a
20 debtor. In re Gruntz, 202 F.3d 1074, 1081, 35 Bankr. Ct. Dec. 160, (9th Cir. 2000)
21 ("The automatic stay sweeps broadly, enjoining the commencement or continuation
22 of any judicial, administrative, or other proceedings against the debtor, . . ."); In re
23 PMI-DVW Real Estate Holdings, 240 B.R. 24 (Bkrcty. D. Ariz. 1999). Even judicial
24 proceedings held in violation of the automatic stay are void. Gruntz at 1082 (citing
25 Phoenix Bond & Indemnity Co. V. Shamblin, 890 F.2d 123, 125 (9th Cir. 1989).

26 There are, however, a number of statutory exceptions to the automatic stay.
27 11 U.S.C. §362(b)(4) provides limited exemptions to the stay for proceedings of
28 governmental agencies such as the Arizona Corporation Commission. PMI-DVW at

1 30. Sub-section 362(b)(4) specifically exempts "the commencement or continuation
2 of an action or proceeding by a governmental unit . . . to enforce *such governmental*
3 *unit's or organization's* police and regulatory power, including the enforcement of a
4 judgment other than a money judgment . . ." (Emphasis added.) *Id.*

5 Subject to appellate review, bankruptcy courts have the ultimate authority to
6 determine the scope of the automatic stay imposed by 11 U.S.C. §362(a), and have
7 a duty to scrutinize a governmental unit's claim of exemption to determine that a
8 valid exemption truly applies. *Gruntz* at 1087; *PMI-DVW* at 31; *McGhan v. Rutz*, 202
9 F.3d 1074 (9th Cir. 2000).

10 Bankruptcy courts also have injunctive powers at their disposal pursuant to 11
11 U.S.C. §105, to enjoin actions that are not subject to the automatic stay but which
12 threaten the bankruptcy estate. *Gruntz* at 1087; *In re Lenke*, 249 B.R. 1 (Bkrtcy. D.
13 Ariz. 2000) (holding that the bankruptcy court has authority to determine whether a
14 state proceeding violates the automatic stay and, if so, to enjoin the proceeding
15 under 11 U.S.C. § 105).

16 A. Factual Background

17 Mr. Lambert was registered as a securities salesman in Arizona from October
18 1989 until approximately July 17, 2000 when his license was suspended. *See*
19 Proposed Order, pp. 1 - 2. Mr. Lambert has been licensed in Arizona to sell various
20 forms of insurance since November 1988. *Id.*

21 The Division's proceeding against Mr. Lambert involves transactions with a
22 single investor.² *See* Proposed Order. As a result of a civil action filed separately
23 by the investor, Mr. Lambert has stipulated to a judgment providing full restitution to
24 the investor. *See* Stipulated Judgment, CV2000-011966, attached hereto as Exhibit
25 C. The investor's judgment is recognized in the Debtors' bankruptcy schedules as

26
27
28 ² Specifically, the sole "investor/victim" is a limited liability company, Direct Utility Contractors, L.L.C., to which Mr. Lambert had issued promissory notes and engaged in other transactions. Direct Utility Contractors is owned by a married couple.

1 claim number 13.

2 The Division's Proposed Order seeks orders against Mr. Lambert:

3 1. To permanently cease and desist from violating the Arizona Securities
4 Act, A.R.S. §44-1801, *et seq.*;

5 2. To rectify the alleged actions, including paying restitution to the
6 investor/victim;

7 3. To pay administrative penalties to the state of Arizona;

8 4. To revoke Mr. Lambert's registration as a securities salesman; and

9 5. To provide any other relief "the Commission deems appropriate."

10 Proposed Order, p. 8.

11 Mr. Lambert has already agreed to submit to an interim cease and desist
12 order. He has already agreed to a civil judgment against him which provides full
13 restitution to the sole investor/victim. His securities registration is already
14 suspended. The only "relief" the Division has requested which has not already been
15 effectuated in one form or another, is the payment of administrative penalties and
16 such other relief as "the Commission deems appropriate."³

17 **B. Jurisdiction of the Division**

18 The Division is responsible for, and is provided limited jurisdiction solely for,
19 protecting the public by policing and enforcing Arizona's securities laws. In re
20 Knoell, 160 B.R. 825 (D. Ariz. 1993). However, the Division appears to be
21 attempting to police laws other than those for which it has jurisdiction.

22 Excluding administrative penalties sought by the Division, there is clearly no
23 public purpose for continuing the proceeding against Mr. Lambert because the sole
24 investor/victim has already obtained all the relief the Division could obtain on its
25 behalf. Any action to enforce either a restitution award or an award of administrative
26

27 ³ Mr. Lambert has offered to consent to the remaining relief sought by the Division but the Division has
28 rejected such offers on the sole grounds that Mr. Lambert's proposed settlement offers did not include specific
findings of fact included in the Division's Proposed Order.

1 penalties would be subject to the approval of this Court. S.E.C. v. Towers, 205 B.R.
2 27 (S.D.N.Y. 1997).

3 The Division's proceeding is no longer, if ever it was, pursued in the interest of
4 protecting the public; rather, the Division, through the Respondents, seeks to strip
5 Mr. Lambert of his insurance license which may be his most valuable asset, the use
6 of which may be his most likely means of funding a plan of reorganization and of
7 paying, or making payments toward, the restitution judgment against him.⁴ See PMI-
8 DVW, 240 B.R. 24 (discussing the authority of the bankruptcy court to review
9 governmental proceedings pertaining to assets of the debtor's estate). The Division
10 is pursuing Mr. Lambert solely to obtain an order containing findings of fact that are
11 pertinent to Mr. Lambert's insurance licenses and not his alleged violations of
12 securities laws.

13 The Division's proceedings against Mr. Lambert have gone beyond the
14 jurisdiction of the Commission, thus the exemption under 11 U.S.C. §362(b)(4) is no
15 longer applicable to the Division's proceedings against Mr. Lambert. See, e.g.,
16 Towers at 29 ("This section [11 U.S.C. §362(b)(4)] is intended to be given a narrow
17 construction . . ."); PMI-DVW at 31.

18 Further, even if the Division were to obtain the remaining relief not already
19 provided in one form or another outside the Division's proceedings—to wit,
20 administrative penalties and "other relief"—the Division is precluded from seeking to
21 collect or enforce most forms of such relief without specific approval from this Court.
22 See, e.g., id. at 30.

23 II. CONCLUSION

24 WHEREFORE Debtor respectfully requests that the Court,

25 A. Issue an Order to Show Cause directing the Respondents to appear and
26

27 ⁴ At the hearing regarding Mr. Lambert's Motion to Stay Administrative Proceeding, Anthony Bingham,
28 Special Assistant Attorney General, stated that the Division would be prejudiced by a grant of the requested stay,
because Mr. Lambert would be able to continue to sell insurance in the interim.

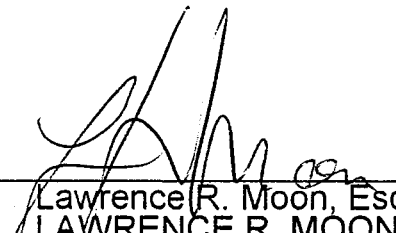
1 show cause why the Court should not determine that their actions against Debtor
2 Clay Lambert, in connection with the proceedings of the Securities Division of the
3 Arizona Corporation Commission, Docket No. S-03413A-01-0000, constitute a
4 violation of 11 U.S.C. §362;

5 B. Issue an order pursuant to 11 U.S.C. §105 barring the Respondents
6 from taking any further action against Debtor Clay Lambert in connection with the
7 proceedings of the Securities Division of the Arizona Corporation Commission,
8 Docket No. S-03413A-01-0000;

9 C. Issue a statement clarifying what actions the Respondents may or may
10 not take against Debtor Clay Lambert in connection with the proceedings of the
11 Securities Division of the Arizona Corporation Commission, Docket No. S-03413A-
12 01-0000; or

13 D. Make such orders providing other and further relief which the Court may
14 deem just and proper.

15 DATED this 3 day of June 2002.

16
17 By 
18 Lawrence R. Moon, Esq.
19 LAWRENCE R. MOON, P.C.
Proposed Special Counsel for
Debtors

20 COPY of the foregoing mailed this
21 3 day of June 2002, to:

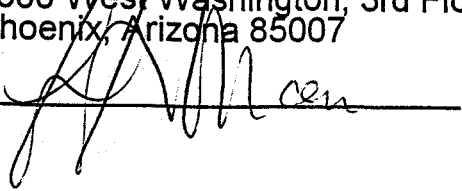
22 United States Trustee
23 P.O. Box 36170
Phoenix, Arizona 85067

24 Richard Cuellar
25 P.O. Box 36170
Phoenix, Arizona 85067
U.S. Trustee Attorney Advisor

26 Lawrence Hirsch
27 Hirsch Law Office, P.C.
5020 East Shea Boulevard, Suite 150
28 Scottsdale, Arizona 85254

1 Phillip J. Dion, III
2 Administrative Law Judge
3 Hearing Division
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 Anthony Bingham
8 Securities Division
9 Arizona Corporation Commission
10 1300 West Washington, 3rd Floor
11 Phoenix, Arizona 85007

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EXHIBIT A

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
3 Chairman
4 JIM IRVIN
5 Commissioner
6 MARC SPITZER
7 Commissioner

8 In the matter of:

9 CLAY EUGENE LAMBERT
10 3711 East Minton Place
11 Mesa, Arizona 85215
12 CRD No. 1959853,

13 Respondent.

DOCKET NO. S-03413A-01-0000

NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST,
FOR RESTITUTION, FOR
ADMINISTRATIVE PENALTIES, FOR
REVOCATION, AND FOR OTHER
AFFIRMATIVE ACTION

14 **NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**

15 The Securities Division ("Division") of the Arizona Corporation Commission ("Commission")
16 alleges that respondent has engaged in acts, practices and transactions that constitute violations of The
17 Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

18 **I.**

19 **JURISDICTION**

20 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
21 Constitution and the Securities Act.

22 **II.**

23 **RESPONDENT**

24 2. Clay Eugene Lambert's ("LAMBERT") last known address is 3711 East Minton Place,
25 Mesa, Arizona 85215.

26 3. LAMBERT first registered as a securities salesman in Arizona in October 1989 and has been
registered in Arizona through different securities dealers for the majority of the time since then.
LAMBERT was last registered as a securities salesman in Arizona with Locust Street Securities, Inc.

1 ("Locust Street") from January 14, 1999, until July 17, 2000. LAMBERT was discharged by Locust
2 Street for failing to cooperate with Locust Street auditors. LAMBERT has not associated with any
3 registered securities dealer since his termination from Locust Street. During relevant times described
4 herein, LAMBERT acted in the capacity of a securities dealer.

5 4. LAMBERT has been licensed in Arizona to sell life and disability insurance since
6 November 1988 and to sell variable insurance products since October 1989. All three of these licenses
7 are scheduled to expire at the end of 2001. From February 1992 to December 1996, LAMBERT was
8 also licensed in Arizona to sell property and casualty insurance.

9 III.

10 FACTS

11 A. Investments With Lambert

12 5. From approximately January 1991 until approximately January 2000, LAMBERT was the
13 financial adviser and insurance salesman for a married couple ("couple") who live in Arizona and for
14 the couple's company that is located in Arizona. The couple met LAMBERT through the wife's
15 parents who had bought insurance from LAMBERT. LAMBERT, over time, gained the trust and
16 confidence of the couple as their financial adviser and their insurance agent.

17 6. On or about October 3, 1994, the couple invested \$150,000 with LAMBERT. LAMBERT
18 told the couple that this money would be used to finance farming operations on a farm in North Dakota
19 that he had previously purchased from his father-in-law. LAMBERT did not actually purchase
20 farmland from his father-in-law until the Spring of 1996 or after. This couple made additional
21 investments with LAMBERT of \$200,000 and \$101,700 on or about May 15, 1996, and April 23,
22 1997, respectively. LAMBERT told the couple that these investments were to finance farming
23 operations and to purchase additional farmland in North Dakota.

24 7. LAMBERT failed to disclose to the couple before they invested, that most, if not all, of the
25 farmland he purchased would be encumbered with a mortgage or other lien held by a financial
26 institution, or by the seller of the property. Payments by LAMBERT for each mortgage or other lien
impeded his financial ability to return the couple's investment principal with accrued interest from

1 farm income. LAMBERT failed to disclose to the couple before they invested, financial statements
2 about himself or his farming operations in North Dakota, particularly, whether or not he could return
3 their investment principal with accrued interest if profits from the farming operations were insufficient
4 to do so. LAMBERT also failed to disclose to the couple before they invested, the specific use of their
5 investment monies. In addition, the couple did not have access to, nor did LAMBERT provide access
6 to, any of this information.

7 8. LAMBERT drafted and executed a promissory note for each of the first two investments by
8 the couple. The first promissory note for \$150,000 is dated October 3, 1994, with an interest rate of
9 15% per annum and is payable to the couple. The second promissory note for \$200,000 is dated May
10 15, 1996, with an interest rate of 12% per annum and is payable to a company that was owned by the
11 couple. Both promissory notes are unsecured. An identical paragraph in both promissory notes
12 requires LAMBERT to maintain term life insurance on his life payable to the couple in an amount
13 sufficient to pay the principal and accrued interest in full in the event of LAMBERT'S death.
14 LAMBERT never maintained term life insurance on his life payable to the couple as required by the
15 promissory notes. On at least a few occasions, LAMBERT told the couple that he had a term life
16 insurance policy on his life payable to the couple as beneficiaries. LAMBERT informed the couple
17 that the term life insurance policy would cover all of their investments with accrued interest, so if he
18 died, the couple would be reimbursed from the insurance proceeds.

19 9. Although LAMBERT did not draft and execute a promissory note for the couple's April 23,
20 1997, investment of \$101,700, he did orally promise the couple an 18% return on their investment.
21 The money for this investment came from the couple's money market account. LAMBERT persuaded
22 the couple to invest this money with him because he promised them a higher return than what they
23 were receiving from their money market account. The couple believed that this investment with
24 accrued interest was covered by a term life insurance policy on the life of LAMBERT as were the prior
25 two investments. More importantly, LAMBERT had previously told the couple that all their
26 investments with him were covered by a term life insurance policy on his life payable to them.

1 10. The couple's investments in LAMBERT'S farm and farming operations in North Dakota
2 totaled \$451,700 or more. LAMBERT promised the couple he would return their principal and pay
3 them interest on their investments from farm profits. LAMBERT has failed to pay any principal or
4 interest on the couple's investments.

5 **B. Dishonest or Unethical Practices**

6 11. From about January 1999 to January 2000, LAMBERT was the bookkeeper for the couple's
7 company. LAMBERT was paid \$3,000 per month. LAMBERT wrote checks to be signed by the
8 husband for invoices, made bank deposits, and engaged in other duties as bookkeeper for the couple's
9 company. All bank statements, invoices, and financial correspondence for the couple's company went
10 through LAMBERT. LAMBERT also had access to information concerning the personal bank
11 accounts, the social security numbers, and other financial information for the couple.

12 12. From about January 1999 through October 1999, LAMBERT misappropriated at least
13 seventeen checks written on the bank account of the couple's company. Most, if not all of the checks,
14 had the purported signature of the husband. The checks, which were deposited or cashed by
15 LAMBERT, were made payable to Lambert Financial Group, L.L.C., and totaled \$230,882 or more.
16 During that same time period, LAMBERT transacted at least two unauthorized withdrawals from the
17 bank account of the couple's company. The funds from these withdrawals were deposited into the
18 bank account of Lambert Financial Group, L.L.C., and totaled \$33,441.50 or more. LAMBERT was
19 the sole member of Lambert Financial Group, L.L.C. and conducted his securities and insurance
20 business under that name. The couple discovered only some of the misappropriated checks in the year
21 2000, when their accountant brought them to their attention. The other misappropriated checks were
22 discovered afterwards.

23 13. In or about April 1999, the couple requested LAMBERT return \$100,000 of the money they
24 had previously invested with him in his farm in North Dakota. LAMBERT agreed to promptly return
25 the money to the couple. LAMBERT told the couple the money would come from his bank account.
26 Instead, LAMBERT transacted, without the knowledge or authority of the couple, a loan against their

1 annuity policy and a partial surrender of their annuity. This annuity had previously been sold to the
2 couple by LAMBERT.

3 14. In or about April 1999, LAMBERT wrote four letters to the insurance company where the
4 couple had an annuity. All four letters were written without the couple's knowledge or consent. Three
5 of these letters were written by LAMBERT to acquire \$100,000 from the couple's annuity account. Of
6 these three letters, LAMBERT signed the couple's signatures on two of them without their
7 authorization. The third letter was signed by LAMBERT as the couple's agent. One of the letters with
8 the couple's unauthorized signatures requested that \$100,000 be immediately withdrawn from their
9 annuity account. Another letter with the couple's unauthorized signatures requested that a loan for
10 \$50,000 be issued against their annuity policy and that \$53,000 be withdrawn from their annuity
11 account. When the couple received two checks from the insurance company they discovered that
12 LAMBERT, without their knowledge or consent, had taken out a loan against their annuity policy and
13 had transacted a partial surrender of the couple's annuity. The couple demanded that the funds be
14 returned to their annuity account. Again, without the couple's authorization, LAMBERT signed the
15 couple's signatures on a fourth letter to the insurance company. This letter was for the purpose of
16 returning the checks to the insurance company. LAMBERT never returned the \$100,000 to the couple.

17 15. From about November 1999 to December 1999, LAMBERT misappropriated at least six
18 more checks written on the bank account of the couple's company. Most, if not all of the checks, had
19 the purported signature of the husband. The checks, which had been deposited or cashed, were made
20 payable to Lambert Financial Group, L.L.C., or Clay Lambert, and totaled \$41,080.86 or more. The
21 husband discovered these misappropriated checks when he reviewed bank statements and cancelled
22 checks for their company's bank account in or about December 1999 and January 2000.

23 16. In or about December 1999, subsequent to the initial discovery of misappropriated checks
24 by the husband, he confronted LAMBERT. LAMBERT admitted signing the husband's name, without
25 authorization, on checks written on the bank account of the couple's company. LAMBERT apologized

26 ...

1 for his actions. LAMBERT said he needed the money for his farm in North Dakota and promised to
2 return the money to the couple no later than the end of January 2000.

3 17. In or about February 28, 2000, LAMBERT delivered a cashier's check to the couple in the
4 amount of \$41,080.86. This cashier's check was payment for the checks LAMBERT had
5 misappropriated that were written on the couple's company bank account in November and December
6 1999. LAMBERT has not yet paid restitution to the couple for the other checks he misappropriated.

7 **IV.**

8 **VIOLATION OF A.R.S. § 44-1841**

9 **(Offer or Sale of Unregistered Securities)**

10 18. From on or about October 3, 1994, LAMBERT offered or sold securities in the form of
11 promissory notes, investment contracts, and evidence of indebtedness within or from Arizona.

12 19. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
13 Securities Act.

14 20. This conduct violates A.R.S. § 44-1841.

15 **V.**

16 **VIOLATION OF A.R.S. § 44-1842**

17 **(Transactions by Unregistered Dealer)**

18 21. LAMBERT offered or sold securities within or from Arizona while not registered as a dealer
19 pursuant to Article 9 of the Securities Act.

20 22. This conduct violates A.R.S. § 44-1842.

21 **VI.**

22 **VIOLATION OF A.R.S. § 44-1991**

23 **(Fraud in Connection with the Offer or Sale of Securities)**

24 23. In connection with the offer or sale of securities within or from Arizona, LAMBERT
25 directly or indirectly: (i) made untrue statements of material fact or omitted to state material facts which
26 were necessary in order to make the statements made not misleading in light of the circumstances under

1 which they were made; or (ii) engaged in transactions, practices or courses of business which operated
2 or would operate as a fraud or deceit upon investors. LAMBERT'S conduct includes, but is not limited
3 to, the following:

- 4 a) making untrue statements to the couple that he had purchased his father-in-law's farm, when
5 in fact, he had not yet purchased the farm;
- 6 b) omitting to disclose to the couple that most if not all of the farmland he purchased would be
7 encumbered with a mortgage or other lien that he would be required to make payments on
8 from farm income;
- 9 c) failing to disclose to the couple financial statements about himself or his farming operations
10 in North Dakota;
- 11 d) failing to disclose to the couple the specific use of their investment monies; and
- 12 e) making untrue statements to the couple that he would maintain term life insurance on his life
13 payable to the couple in an amount sufficient to pay the principal and accrued interest of
14 their investments when in fact he never did maintain this insurance.

15 24. This conduct violates A.R.S. § 44-1991.

16 VII.

17 REVOCATION PURSUANT TO A.R.S. § 44-1962

18 (Revocation of Registration of Salesman)

19 25. LAMBERT'S conduct is grounds to revoke his registration as a securities salesman with
20 the Commission pursuant to A.R.S. § 44-1962. Specifically, LAMBERT has:

- 21 a) as described above, made untrue statements of material fact or omitted to state material facts;
22 or, engaged in transactions, practices or courses of business which operated or would operate
23 as a fraud or deceit upon the couple and is therefore guilty of fraudulent acts or practices in
24 connection with the purchase or sale of securities pursuant to A.R.S. § 44-1962(A)(9);
- 25 b) misappropriated checks written on the couple's company bank account and is therefore
26 lacking in integrity pursuant to A.R.S. § 44-1962(A)(4) and has engaged in dishonest or

1 unethical practices in the securities industry pursuant to A.R.S. § 44-1962(A)(10) and
2 A.A.C. R14-4-130(A);

3 c) without authorization, signed the couple's signatures on letters in relation to the couple's
4 annuity, obtained a loan and transacted a partial surrender of the couple's annuity without
5 their knowledge or consent and is therefore lacking in integrity pursuant to A.R.S. § 44-
6 1962(A)(4) and has engaged in dishonest or unethical practices in the securities industry
7 pursuant to A.R.S. § 44-1962(A)(10) and A.A.C. R14-4-130(A)(6); and

8 d) made unauthorized use of funds from the couple's company bank account or converted
9 funds from the couple's company bank account for his personal benefit and is therefore
10 lacking in integrity pursuant to A.R.S. § 44-1962(A)(4) and has engaged in dishonest or
11 unethical practices in the securities industry pursuant to A.R.S. § 44-1962(A)(10) and
12 A.A.C. R14-4-130(A)(16).

13 VIII.

14 REQUESTED RELIEF

15 The Division requests that the Commission grant the following relief against LAMBERT:

16 1. Order LAMBERT to permanently cease and desist from violating the Securities Act,
17 pursuant to A.R.S. § 44-2032;

18 2. Order LAMBERT to take affirmative action to correct the conditions resulting from his acts,
19 practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

20 3. Order LAMBERT to pay the state of Arizona administrative penalties of up to five thousand
21 dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

22 4. Order the revocation of LAMBERT'S registration as a securities salesman pursuant to
23 A.R.S. § 44-1962; and

24 5. Order any other relief that the Commission deems appropriate.

25 ...

26 ...

IX.

HEARING OPPORTUNITY

Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. A request must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Respondent or his attorney must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. A Docket Control cover sheet must accompany the request. A cover sheet form and instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at www.cc.state.az.us/utility/forms/index.htm.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order against Respondent granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shelly M. Hood, ADA Coordinator, voice phone number 602/542-3931, e-mail shood@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

Dated this ____ day of _____, 2001.

Mark Sendrow
Director of Securities

EXHIBIT B

1 GUST ROSENFELD P.L.C.
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2 Phoenix, AZ 85073.3300
(602) 257-7473
3 Michael Salcido - 009828

4 Attorneys for Respondent

5 BEFORE THE ARIZONA CORPORATION COMMISSION
6

7 WILLIAM A. MUNDELL
Chairman
8 JIM IRVIN
Commissioner
9 MARC SPITZER
Commissioner
10

11 In the matter of:

12 CLAY EUGENE LAMBERT
3711 East Minton Place
13 Mesa, Arizona 85215
14 CRD No. 1959853,

Respondent.

) Docket No. S-03413A-01-0000

) MOTION TO STAY
) ADMINISTRATIVE
) PROCEEDING

) Expedited Oral Argument Requested

16 Respondent Clay Eugene Lambert ("Lambert") moves that this
17 administrative action be stayed. Lambert just learned that he is under criminal
18 investigation by the Arizona Department of Insurance ("DOI") and the Arizona
19 Attorney General ("AG"). This action should be stayed until those offices make a
20 decision on whether or not to bring a criminal action against Lambert. A stay would not
21 prejudice the Securities Division ("Division") or its "victim," Woods.

22 Factual Background

23 On June 25, 2000, the Division's "victim" filed a lawsuit against Lambert.
24 On September 21, 2000, Lambert gave his first Examination Under Oath (EUO) to the
25 Division. On March 8, 2001, he gave a second EUO. On November 9, 2001, judgment
26 was entered in favor of the Division's "victim" for \$937,372.50.

1 As the Commission knows, Lambert declared bankruptcy. On March 25,
2 2002, the Division's lawyer in this case appeared at Lambert's first meeting of creditors.
3 He questioned Lambert under oath even though he knew that Lambert was represented
4 by counsel undersigned. The Division had already taken Lambert's testimony twice. If,
5 in fact, the Division needed information for its case, it could have sent a subpoena or
6 document request to Lambert or his lawyer. Instead, it improperly questioned Lambert
7 without counsel present.

8 On April 15, 2002, the DOI sent a letter to Lambert requesting a meeting.
9 It is likely that the Division was the impetus behind the DOI investigation. Lambert did
10 not receive this letter. The investigator for the DOI, Dan Ray, followed up with counsel
11 undersigned. Mr. Ray advised counsel undersigned that as of April 15, 2002, Lambert
12 was under criminal investigation.

13 The Division Should Not Have Questioned

14 Lambert Without Counsel Present

15 If Lambert was under criminal investigation as of April 15, 2002, it is
16 more than likely that he was also under criminal investigation as of March 25, 2002. As
17 such, what business does the State have questioning a client under criminal
18 investigation, without his lawyer present? The Division cannot hide behind the fact that
19 these are "separate agencies," since it has routinely been funneling information on
20 Lambert to the DOI and the AG.

21 The Action Should Be Staved Under The

22 Doctrine Of Parallel Proceedings

23 Lambert is subject to parallel, simultaneous, administrative and criminal
24 proceedings. A court may decide in its discretion to stay civil proceedings pending the
25 outcome of criminal proceedings "when the interests of justice seem [] to require such
26 ...

1 action], sometimes at the request of prosecution, . . . sometimes at the request of the
2 defense. *United States v. Kordel*, 397 U.S. 1, 12 (1970).

3 Whether to grant such stays is within the trial court's discretion. *Afro-*
4 *Lecon v. United States*, 820 F.2d 1198, 1202 (Fed. Cir. 1987). If parallel proceedings
5 would substantially prejudice the defendant's rights, however, the court should stay the
6 proceedings. *Securities and Exchange Commission v. Dresser Industries*, 628 F.2d
7 1368, 1374 (D.C. Cir.), *cert. denied*, 449 U.S. 993 (1980).

8 The court should consider a number of factors, including whether the civil
9 and criminal proceedings involve the same matter, whether resolution of the criminal
10 case would moot, clarify or otherwise affect various contentions in the civil case, and
11 whether the possibility exists that a party might exploit civil discovery for the
12 advancement of a criminal case. *State v. Ott*, 167 Ariz. 420, 808 P.2d 305, 314 (App.
13 Div. 1, 1990), citing *United States v. Mellon Bank*, 545 F.2d 869, 873 (3rd Cir. 1976).

14 Additional circumstances weighing in favor of the stay include "malicious
15 prosecution, the absence of counsel for defendant during depositions, agency bad faith,
16 malicious government tactics and other special circumstances." *Id.* citing *Afro-Lecon*,
17 820 F.2d at 1202.

18 Other than where there is specific evidence of agency bad faith or
19 malicious governmental tactics, the strongest case for deferring civil is where a party
20 under indictment for a serious offense is required to defend a civil or administrative
21 action involving the same matter. *SEC v. Dresser* at 1376. A non-criminal proceeding,
22 if not deferred, might undermine the party's Fifth Amendment privilege, expand rights
23 of criminal discovery beyond the limits of Criminal Rules of Procedure, expose the
24 basis of the defense to the prosecution in advance of criminal trial, or otherwise
25 prejudice the case. If delay of the non-criminal proceeding would not seriously injure
26 the public interest, a court may be justified in deferring it. *Id.*

1 **There Is No Prejudice To The Division Or Its "Victim"**

2 **If This Action Is Stayed**

3 The Division no doubt will jump up and down and scream that it will be
4 "prejudiced" by a stay. That is nonsense. On November 9, 2001, a judgment for
5 \$937,372.50 was entered against Lambert, and Lambert entities, in favor of Woods.
6 This is even more than the Division is requesting in its Notice. Therefore, the
7 Division's "victim" is already monetarily protected, pending the bankruptcy.

8 There is no prejudice to the Division respecting its regulatory duties
9 because Lambert is not currently licensed as a securities salesman. Lambert will
10 stipulate to an interim cease and desist order, and agree not to apply to be a securities
11 dealer or salesman until this hearing is held and decided. Therefore, a stay will not
12 harm the investing public.

13 **Lambert Needs Additional Time To Get A Criminal Lawyer**

14 **Appointed As Special Counsel By The Bankruptcy Court**

15 As this Commission knows, counsel must apply to be appointed by the
16 Bankruptcy Court as Lambert's attorney. Lambert now is under criminal investigation
17 and needs a criminal lawyer. He needs time to find a criminal lawyer, make the proper
18 application, and obtain the appointment. Lambert cannot go forward with this hearing
19 without the benefit of criminal counsel.

20 **Conclusion**

21 The Division has nobody to thank but itself for this mess. This is a matter
22 of an administrative agency "trying too hard to win." Instead of simply conducting an
23 investigation governed by the Securities Act, the Division is attempting to regulate
24 insurance professionals, act as co-counsel in a plaintiff's private litigation, and instigate
25 criminal proceedings. In the process, it may have violated Lambert's rights.

26 ...

1 It is fundamentally unfair for the government to question a person under
2 criminal investigation, represented by counsel, without that lawyer present. Now the
3 Division wants Lambert to show up at the hearing, take the Fifth Amendment (as he
4 likely must at this point), and use that failure to testify to obtain an order. The Division
5 will then use that order to cause Lambert to lose his insurance license, and, possibly, his
6 liberty.

7 This action must be reined in before irreparable damage is done to
8 Lambert and the justice system.

9 RESPECTFULLY SUBMITTED this 24th day of May, 2002.

10 GUST ROSENFELD P.L.C.

11 

12
13 Michael Salcido
14 Attorney for Respondent

15 **ORIGINAL** and ten (10) copies filed with:

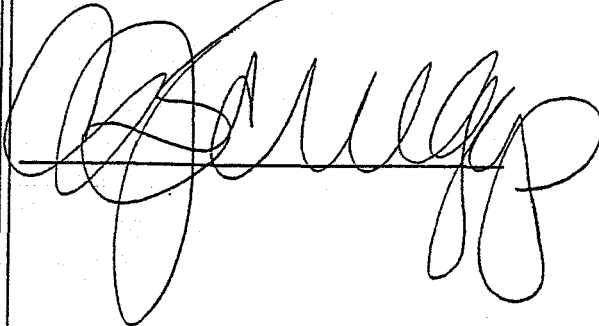
16 Docket Control
17 Arizona Corporation Commission
18 1200 W. Washington
19 Phoenix, AZ 85007

20 **COPY FAXED AND MAILED** to:

21 Phillip J. Dion III
22 Hearing Division
23 Arizona Corporation Commission
24 1200 W. Washington
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26 Anthony Bingham
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EXHIBIT C

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11 Edward F. Novak - 006092
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13 Attorneys for Plaintiff

14
15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
16
17 IN AND FOR THE COUNTY OF MARICOPA

18 DIRECT UTILITY CONTRACTORS,
19 L.L.C., a limited liability company,

20 Plaintiff,

21 vs.

22 CLAY E. LAMBERT, a married man;
23 RENEE J. LAMBERT, a married woman;
24 LAMBERT FINANCIAL GROUP, L.L.C.,
a limited liability company; EVERGREEN
FINANCIAL GROUP; LAMBERT
FARMS, INC., a corporation; CLAY E.
LAMBERT AND RENEE J.
REVOCABLE TRUST; LOCUST
STREET SECURITIES, INC., a
corporation; JOHN DOES I-X, ABC
CORPORATIONS I-X, and XYZ
PARTNERSHIPS I-X,

Defendants.

NO. CV 2000-011966

STIPULATED JUDGMENT

(Assigned to the Honorable
Roger W. Kaufman)

Plaintiff Direct Utility, L.L.C. and Defendants Clay E. Lambert and Renee J. Lambert,
husband and wife; Lambert Financial Group, L.L.C.; Evergreen Financial Group; Lambert

1 Farms, Inc.; Clay E. Lambert and Renee J. Lambert Revocable Trust (collectively,
2 "Defendants"), hereby stipulate to judgment in this matter.

3 On or about June 26, 2000, Plaintiff Direct Utility, L.L.C. filed the Complaint which
4 commenced this proceeding.

5 To resolve the issues raised in the Complaint, and to avoid the costs of litigation,
6 Defendants hereby stipulate and agree to the entry of a judgment against them, in the sum of
7 \$937,372.50.

8 Based upon this Stipulation,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff Direct Utility,
10 L.L.C. have judgment against the Defendants in this matter. *This action is terminated*

11 DONE IN OPEN COURT this 5 day of Nov., 2001. *by this Judgment.*

12
13 **R. W. KAUFMAN**

14 ~~The Honorable Roger W. Kaufman~~
15 ~~MARICOPA COUNTY SUPERIOR COURT~~
16 *Judge*